



Mignon McLemore
Assistant General Counsel

May 18, 2020

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

RE: File No. SR-FINRA-2020-005 (Proposed Rule Change to Amend the FINRA Code of Arbitration Procedure for Customer Disputes and the FINRA Code of Arbitration Procedure for Industry Disputes to Apply Minimum Fees to Requests for Expungement of Customer Dispute Information)

Dear Ms. Countryman:

This letter responds to comments received by the Securities and Exchange Commission (“SEC” or “Commission”) to the above-referenced rule filing related to proposed amendments to the Code of Arbitration Procedure for Customer Disputes (“Customer Code”) and the Code of Arbitration Procedure for Industry Disputes (“Industry Code”) (together, “Codes”) to apply minimum fees to requests for expungement of customer dispute information.¹

The Commission published the Proposal for public comment in the Federal Register on February 26, 2020 and received seven comments in response to the Proposal.² Four of

¹ See Securities Exchange Act Release No. 88251 (February 20, 2020), 85 FR 11165 (February 26, 2020) (Notice of Filing of File No. SR-FINRA-2020-005) (“Proposal”).

² See Letter from Steven B. Caruso, Maddox Hargett & Caruso, P.C., to Vanessa Countryman, Secretary, SEC, February 21, 2020 (“Caruso”); letter from Robin M. Traxler, Senior Vice President, Policy & Deputy General Counsel, Financial Services Institute, to Vanessa Countryman, Secretary, SEC, March 18, 2020 (“FSI”); letter from Samuel Edwards, President, Public Investors Advocate Bar Association, to Ms. Vanessa Countryman, Secretary, SEC, March 18, 2020 (“PIABA”); letter from Christopher Gerold, President, North American Securities Administrators Association, Inc., to Vanessa Countryman, Secretary, SEC, March 18, 2020 (“NASAA”); letter from Dochter D. Kennedy, President & Founder, AdvisorLaw, LLC, to Jill M. Peterson, Assistant Secretary, SEC, March 18, 2020 (“AdvisorLaw”); letter from Lauren K. Petersen, Christina Buru, Gia Fernicola,

the commenters expressed general support for the Proposal,³ but some of these commenters also suggested modifications to the Proposal.⁴ AdvisorLaw and FSI opposed the Proposal. Ryder requested a clarification regarding the application of the Proposal.

The following are FINRA's responses to concerns and suggestions raised by the commenters.

Current Expungement Framework

Although generally supportive of the Proposal, PIABA expressed disappointment that the Proposal focuses only on fees for expungement requests, rather than the proposed rules that were part of FINRA's request for comment in Regulatory Notice 17-42 (December 2017). In particular, PIABA stated that while it supports FINRA's request to amend its rules to apply minimum fees to requests to expunge customer dispute information, it believes that the Proposal should be revised to require that all requests for expungement of customer dispute information be heard by a three-person panel. In addition, NASAA urged the Commission to require FINRA to enhance the Proposal by requiring the unanimous consent of a three-person panel in deciding all expungement requests.

Although FINRA believes that most expungement requests, particularly straight-in requests,⁵ should be decided by a three-person panel, FINRA has determined not to revise this Proposal, which is focused on applying minimum fees, to require a three-person panel to decide expungement requests.⁶ Thus, under the Proposal, the amount of damages

Legal Interns and Christine Lazaro, Director of the Securities Arbitration Clinic and Professor of Clinical Legal Education, Securities Arbitration Clinic at St. John's University School of Law, to Vanessa Countryman, Secretary, SEC, March 18, 2020 ("St. John's"); and letter from Richard P. Ryder, President, Securities Arbitration Commentators, Inc., to Vanessa Countryman, Secretary, SEC, March 26, 2020 ("SAC").

³ See Caruso, PIABA, NASAA and St. John's.

⁴ See PIABA and NASAA.

⁵ As discussed in the Proposal, a "straight-in" request is where an associated person files a request for expungement separate from the customer arbitration. The straight-in request may be filed against a former or current firm or the customer. FINRA notes, however, that straight-in requests against the customer are rare.

⁶ Expungement requests may be complex to resolve, particularly straight-in requests where customers typically do not participate in the expungement hearing. Thus,

specified will continue to determine whether a single arbitrator or a three-person panel will decide the case.⁷ In addition, the parties will be able to agree in writing to a single arbitrator.⁸

FINRA has also determined not to revise the Proposal to require the unanimous consent of a three-person panel to decide expungement requests. FINRA believes it is appropriate that this Proposal focus only on applying minimum fees to requests for expungement of customer dispute information to help ensure that parties requesting expungement pay the fees intended for such requests under the Codes and that the fees charged when expungement is requested are more consistent. At the same time, however, FINRA recognizes the concerns raised by the commenters regarding the current expungement framework. As noted in the Proposal, FINRA is separately developing other changes to the current expungement framework, including codifying as rules the Notice to Arbitrators and Parties on Expanded Expungement Guidance (“Guidance”)⁹ and establishing a roster of arbitrators with additional training and experience from which a three-person panel would be selected to decide straight-in requests and expungement

having three arbitrators available to ask questions and request evidence helps ensure that a complete factual record is developed to support the arbitrators’ decision at such expungement hearings. See also St. John’s (stating that “a significant amount of time and effort is needed to administer, consider, and decide expungement requests[. h]aving three arbitrators look at the evidence and come to a resolution is far more effective than having a single arbitrator”).

⁷ Whether the claimant specifies damages, and the amount specified, determines the fees assessed in arbitration cases and whether a single arbitrator or a three-person panel will decide the case. See FINRA Rules 12401 and 13401. If the amount of the claim is \$50,000 or less, exclusive of interest and expenses, the panel will consist of one arbitrator and the claim is subject to the simplified arbitration procedures under Rule 12800. If the amount of the claim is more than \$50,000, but less than \$100,000, exclusive of interest and expenses, the panel will consist of one arbitrator, unless the parties agree in writing to three arbitrators. If the amount of a claim is more than \$100,000, exclusive of interest and expenses, or is non-monetary, or if the claim does not request money damages, the panel will consist of three arbitrators, unless the parties agree in writing to one arbitrator.

⁸ See id. AdvisorLaw questioned whether the Proposal would change the parties’ ability to request a single arbitrator; it would not.

⁹ See <https://www.finra.org/arbitration-mediation/notice-arbitrators-and-parties-expanded-expungement-guidance>.

requests in settled customer arbitrations.¹⁰ FINRA welcomes a continued dialogue with the commenters on these and other proposed changes to the expungement framework.

Proposed Member Surcharge and Process Fee

Under the Proposal, if an associated person files a straight-in request against a member firm, the member firm would be assessed the member surcharge and process fee for a non-monetary or not specified claim (“non-monetary claim”).¹¹ FSI requested that FINRA refund the member surcharge and process fee if the expungement request is denied or on the member firm’s showing of financial hardship.

Under the Codes, a member surcharge and process fee are charged to member firms using the arbitration forum to help cover the costs of administering the forum. The amount of the member surcharge and process fee is based on the claim amount. As stated in the Proposal, a claim that does not request a dollar amount is considered a non-monetary claim under the Codes; an expungement request is a non-monetary claim. Thus, the proposed member surcharge and process fee are consistent with what a member firm should pay today for a straight-in request without an additional small monetary claim filed against a member firm.

FINRA notes, however, that the Codes permit the Director of Dispute Resolution Services (“Director”) to refund or waive the member surcharge under extraordinary circumstances.¹² The Customer Code also permits the Director to refund the member

¹⁰ See Regulatory Notice 17-42 (December 2017).

¹¹ A member surcharge is assessed against a member firm if, for example, the member firm files an arbitration claim, is named as a respondent in a claim, or employed, at the time the dispute arose, a broker who is named as a respondent; the amount of the surcharge is based on the amount of the claim. See FINRA Rules 12901(a)(1)(B) and 12901(a)(1)(C), and FINRA Rules 13901(a)(2) and 13901(a)(3).

Further, each member firm that is a party to an arbitration claim in which more than \$25,000 is in dispute, or that is non-monetary or not specified, is required to pay a process fee based on the amount or nature of the claim. If a broker of a member is a party, the member firm that employed the associated person at the time the dispute arose is charged the process fee. See FINRA Rules 12903(a) and (b) and FINRA Rules 13903(a) and (b).

¹² See FINRA Rules 12901(b)(2) and 13901(e). For example, the Director may waive or refund the member surcharge if the member firm is named as a respondent and the Director declines to permit use of the arbitration forum or if a customer

surcharge if the panel denies all of a customer's claims against the member firm or associated person, and allocates all hearing session fees assessed against the customer.¹³ Thus, the Codes currently permit the Director to refund or waive the member surcharge in certain circumstances. These provisions would not change under the Proposal. The Codes do not currently permit the waiver or refund of the process fee. This also would not change under the Proposal.¹⁴

FINRA has determined not to revise the Proposal to refund the member surcharge or process fee if a panel denies an associated person's straight-in request, or to waive these fees on a member firm's showing of financial hardship. As discussed above, the member surcharge and process fee are charged to member firms using the forum to help cover the costs of administering the forum.

The Proposal is intended to help ensure that costs to the forum for administering expungement requests are being allocated to the party or parties requesting expungement and, as applicable, the member firms that employ them. In addition, consistent with the current fee structure under the Codes, FINRA believes that member firms, rather than associated persons or customers, should continue to bear the larger share of the costs of expungement. As with other types of arbitration claims, member firms that are respondents or employed the associated person seeking expungement, pay the majority of the expense of the forum through the member surcharge and process fee. However, FINRA intends to monitor the impact of the fees on parties and consider if additional changes are warranted.

mistakenly names a member firm as a respondent, and later withdraws the claim as to that particular member firm. See also Securities Exchange Act Release No. 47176 (January 13, 2003), 68 FR 2601 (January 17, 2003) (Notice of Filing of File No. SR-NASD-2003-001).

¹³ See FINRA Rules 12901(b)(1)(A) and (B).

¹⁴ Under the Codes, the Director may defer payment of all or part of an associated person's filing fee on a showing of financial hardship. See FINRA Rules 12900(a)(1) and 13900(a)(1). As stated in the Proposal, this provision applies to expungement requests. Information on how to request an arbitration fee waiver is available at <https://www.finra.org/arbitration-mediation/arbitration-fee-waivers>. In addition, in the award, the panel may order a party to reimburse another party for all or part of any filing fee paid. See FINRA Rules 12900(d) and 13900(d).

Reliability of FINRA’s Analysis

AdvisorLaw raises a number of concerns regarding the reliability of FINRA’s analysis. FINRA addresses these concerns below.

BrokerCheck Usage

In discussing customer dispute information contained in the Central Registration Depository (“CRD[®]”) system and its public display through BrokerCheck[®], the Proposal notes that in 2019, users conducted more than 40 million searches of firms and brokers in BrokerCheck. In response to this information, AdvisorLaw commented that in 2016, FINRA reported 111 million reviews of broker or firm records and questioned this difference in FINRA’s BrokerCheck usage data.¹⁵

FINRA notes that in 2017, it began using a different service provider to monitor BrokerCheck web traffic. The new web-monitoring service concentrates on activity related to individual users and excludes from its counts, for example, views by certain automated services. Since 2016 was the last year before FINRA switched web-monitoring services, those numbers are much higher than the numbers from 2017 to present. Thus, the 2016 numbers are not comparable to the 2019 numbers.¹⁶

Economic Impact Assessment (“EIA”)

Request for Additional Data on Costs to Operate the Forum

AdvisorLaw stated that FINRA does not provide the specific costs FINRA incurs related to administering arbitrations by its dispute resolution forum. FINRA notes that in the EIA in the Proposal, it provided cost and revenue information, which demonstrate the impact that the practice of adding a small damages claim to an expungement request has had on the forum.¹⁷ FINRA believes the data and analysis it has provided support the need for the Proposal.

¹⁵ See A. Williams & N. Condon, FINRA Sanctions Citigroup Global Markets Inc. \$11.5 Million for Displaying Inaccurate Research Ratings, FINRA Media Center – News Releases (Dec. 28, 2017), <https://www.finra.org/media-center/news-releases/2017/finra-sanctions-citigroup-global-markets-115-millioninaccurate>.

¹⁶ Actual individual usage appears to be comparable to prior years, and FINRA did not observe any material changes in BrokerCheck use during 2017.

¹⁷ FINRA is able to identify 5,732 expungement requests of customer dispute information filed from January 2016 through June 2019 (“sample period”). During

Two-Hearing Sessions Assumption

AdvisorLaw expressed concern that FINRA's assumption of one prehearing conference and one hearing on the merits does not accurately reflect the cases in which expungement relief was requested. FINRA notes that the assumption of one prehearing conference and one hearing session on the merits is based on the median number of prehearing conferences (one) and hearing sessions on the merits (one) associated with straight-in requests that were filed and closed during the sample period. This assumption is consistent with evidence provided by AdvisorLaw. AdvisorLaw stated that in a sample of straight-in requests that it examined "78.8% were concluded with merely 'one prehearing conference and one hearing on the merits.'" FINRA continues to believe that the use of the assumption results in a reasonable estimate for the additional fees that would have been assessed during the sample period. FINRA acknowledges that additional fees would have been assessed for cases with a greater number of pre-hearing conferences or a greater number of hearing sessions on the merits.

Fees Assessed, Not Collected

AdvisorLaw also expressed concern that the estimate of additional fees that would have been assessed under the Proposal (if associated persons had not added a small damages claim to their expungement requests) did not account for the total refundable portion of the filing fees. The Proposal, however, only addresses the assessment of fees. The collection of fees (which includes crediting the refundable portion of the filing fees) are, therefore, outside the scope of the Proposal and, therefore, the EIA.

Although the collection of fees is outside the scope of the Proposal, FINRA has determined to clarify how it calculates the refund amount under the Codes.¹⁸ According to

the sample period, if parties requesting expungement had been assessed the fees applicable to non-monetary claims, then in the aggregate a reasonable estimate for the additional fees that would have been assessed is \$9.7 million. In general, the fees associated with a small claim procedure do not cover the specific costs to the forum as well as the overall attendant costs to administer an expungement request. See Proposal at 11171, n.59. See also St John's (noting the lost forum fees that FINRA has forgone over the years, and expressing concern that the "lost revenue may lead to higher forum fees for others using the forum, including customers").

¹⁸ FINRA relies on Rule 13902(b)(3), rather than Rule 13902(b)(1), to determine the hearing session refund. FINRA Rule 13902(b)(3) states that, in the award, the amount of one hearing session fee will be deducted from the total amount of hearing session fees assessed against the party who paid the filing fee. If this amount is more than any fees, costs, and expenses assessed against this party under

AdvisorLaw, FINRA refunds only half of one hearing session fee, instead of the entire amount, to the party who paid the filing fee. FINRA notes that the filing fee a claimant pays to initiate an arbitration claim has a refundable and non-refundable portion.¹⁹ When an associated person files a claim requesting expungement and adds a small damages claim, the filing fee is \$50; the refundable portion of that filing fee is \$25. When an associated person files a claim requesting expungement and pays the non-monetary claim filing fee of \$1,575, the refundable portion of that filing fee is \$1,125. The panel credits the refundable portion of the filing fee to the claimant at the end of the case (*i.e.*, in the award) to pay for one hearing session in accordance with the Codes.

The 2015 Study

AdvisorLaw suggested that the results of the 2015 academic study (“2015 Study”) referenced in the Proposal are not reliable because the authors “only count[ed] complaints that led to awards against brokers or settled above a *de minimis* threshold.”²⁰ FINRA notes that the Proposal cites another study with a different empirical methodology that also finds past disciplinary and other regulatory events associated with a member firm or individual can be predictive of similar future events.²¹ FINRA believes the inferences from the 2015 Study are, therefore, consistent with other, similar studies using different sets of assumptions.

the Code, the balance will be refunded to the party. See also FINRA Rule 12902(b)(3).

¹⁹ In 2007, FINRA combined the filing fee and hearing session deposit into a single fee that a party must pay when filing a claim. The change simplified the filing fee schedules without resulting in any significant changes to the amounts parties are required to pay to file an arbitration claim, and made the fee schedules easier to read and understand. See Securities Exchange Act Release No. 55158 (January 24, 2007), 72 FR 4574 (January 31, 2007) (Approval Order for File Nos. SR-NASD-2003-158 and SR-NASD-2004-011).

²⁰ The 2015 Study seeks to determine the “predictability of investor harm associated with brokers based on BrokerCheck information.” See Hammad Qureshi and Jonathan Sokobin, Do Investors Have Valuable Information About Brokers? FINRA Office of the Chief Economist Working Paper, (August 2015).

²¹ See Mark Egan, Gregor Matvos, and Amit Seru, The Market for Financial Adviser Misconduct, *Journal of Political Economy* 127, no. 1 (February 2019): 233-295.

Adding a Small Damages Claim to an Expungement Request

AdvisorLaw expressed concern that the Codes authorize the Director “to unilaterally assess hearing session fees of up to \$1,500 per session and filing fees of up to \$4,000 for non-monetary claims.” For this reason, AdvisorLaw stated that it includes “nominal monetary relief” with its expungement requests to prevent the Director from “assess[ing] forum fees (hearing session and filing fees) in excess of those associated with monetary claims.”

As stated in the Proposal, an expungement request is a non-monetary claim for which an associated person requesting expungement should pay a \$1,575 filing fee.²² In addition, the hearing session fee for a non-monetary claim is \$1,125.²³ These are the filing and hearing session fees assessed in the absence of the addition of a small damages claim; the Director does not specify a different amount. The Proposal is intended to help ensure that parties requesting expungement pay the fees associated with such requests by amending the Codes to apply minimum fees for all expungement requests, regardless of whether the requesting party adds a small damages claim to the request. Thus, the Proposal would add consistency to the fees charged across all expungement requests.

Compliance with the Exchange Act

In the Proposal, FINRA stated its belief that the proposed rule change is consistent with the provisions of Sections 15A(b)(6) and 15A(b)(5) of the Securities Exchange Act of 1934 (“Act”).²⁴ AdvisorLaw asserted that FINRA “has failed to achieve [these] requirement[s] of the Act.” For example, AdvisorLaw stated that “at no point within the proposal does the Regulator accuse any individual or group of individuals outright of

²² See FINRA Rules 12900(a)(1) and 13900(a)(1).

²³ See FINRA Rules 12902(a)(1) and 13902(a)(1). Parties are charged hearing session fees for each hearing session, based on the customer’s claim amount. In the award, the panel determines the amount of each hearing session fee that each party is required to pay.

²⁴ See 15 U.S.C. 78o-3(b)(6) and 15 U.S.C. 78o-3(b)(5). Section 15A(b)(6) of the Act requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Section 15A(b)(5) of the Act requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls.

‘fraudulent’ practices.” In addition, AdvisorLaw stated that FINRA has not demonstrated that the Proposal is designed to promote just and equitable principles of trade or that it is designed, in general, to protect investors and the public interest. AdvisorLaw stated that “the effect of the proposed changes will undoubtedly result in fewer associated persons’ ability to seek expungement of ‘factually impossible, clearly erroneous, or false’ information. If incorporated as proposed, the very mechanism by which such information is routinely pruned from the CRD system will be underutilized—resulting in the overpopulation of ‘factually impossible, clearly erroneous, or false’ information amid the CRD system.”

AdvisorLaw also raised concerns that FINRA is “singling out” expungement “among all non-monetary types of relief” and stated that “the ease with which [FINRA] purposes [*sic*] to assess multiple Member Surcharges and Member Processing Fees is not commensurate with the ‘reasonable’ requirement of [Section 15A(b)(5) of the Act].” In addition, AdvisorLaw criticized FINRA for not assessing fees against investors who “caused the disclosure in question” and “choose to participate in the hearing on the merits” even where the investors are not a party to the arbitration.

As stated in the Proposal, FINRA believes that the Proposal is consistent with the provisions of Sections 15A(b)(5) and 15A(b)(6) of the Act. The Proposal is intended to close gaps in the fee structure that have emerged in the existing expungement process, such as where parties add small dollar claims to their expungement requests to significantly lower the fees associated with expungement requests and to have expungement requests considered and decided by a single arbitrator rather than a three-person panel. In addition, as an expungement request is a separate relief request that an arbitrator or panel must consider and decide, the filing fees and related member and forum fees should reflect the general complexity of these requests, as well as the time and effort needed to administer, consider and decide them. Thus, the Proposal will help ensure that the fees for expungement requests are assessed, and that the costs borne by the forum to administer expungement requests are allocated, as intended, to those requesting expungement under the Codes. In addition, under the Proposal, the fees will apply consistently to all parties requesting expungement.²⁵

²⁵ Consistent with other arbitration proceedings and the current fee structure under the Codes, under the Proposal, member firms, rather than associated persons or customers, would continue to bear the larger share of the costs of expungement through the member surcharge and process fee. With respect to the concern that the minimum filing fee may prevent associated persons from making meritorious expungement requests, FINRA notes that the Director may defer payment of all or part of an associated person’s filing fee on a showing of financial hardship. See supra note 14.

To the extent that the Proposal results in more expungement requests being heard by a three-person panel, particularly for straight-in requests that often do not include customer participation and can be complex to resolve, the Proposal would help ensure a complete factual record to support the arbitrators' decision, regardless of whether the arbitrators grant or deny the expungement request. This, in turn, will help protect investors and the public interest by helping to ensure the accuracy and integrity of information in the CRD system.²⁶

In addition, as stated in the Proposal, the fees associated with non-monetary claims are not new and would not change under the Proposal. The Proposal would apply the fees associated with non-monetary claims as minimum fees to requests to expunge customer dispute information. As with other non-monetary claims, FINRA incurs costs to process expungement requests. Accordingly, the "singling out" of expungement fees is so that expungement requests are subject to the same minimum filing fee as other non-monetary claims.

Lastly, FINRA does not agree with AdvisorLaw's suggestion that customers who choose to participate in expungement hearings, even though they are not a party to the arbitration, should be assessed fees under the Proposal. Such fees could have a chilling effect on customer participation and would be inconsistent with FINRA's long-held position of encouraging customer participation in expungement hearings. Customer participation during an expungement hearing provides the panel with important information and perspective that it might not otherwise receive. Thus, FINRA seeks to encourage customer participation in expungement hearings, even if the customer is not a party.²⁷

Requests to Expunge Form U5 Disclosures

Ryder requested that FINRA clarify whether the Proposal would apply to requests by associated persons to expunge information involving disputes between a member firm and a current or former associated person based on the defamatory nature of the

²⁶ The expungement framework seeks to balance the competing interests of providing regulators broad access to information about customer disputes to fulfill their regulatory obligations, providing a fair process that recognizes a broker's interest in protecting their reputation, and ensuring investors have access to accurate information about brokers.

²⁷ See Guidance (discussing the importance of allowing customers and their counsel to participate in expungement hearings if they wish to).

information in the CRD system.²⁸ FINRA notes that the Proposal applies only to requests to expunge customer dispute information.

Other Concerns

AdvisorLaw raised concerns regarding the requirements to report information in the CRD system, and the accuracy and completeness of that information.²⁹ In addition, FSI urged FINRA to address the requirement that “member firms disclose customer complaints on its representative’s CRD even if the representative will be responsible for significant amounts in arbitration fees for expunging a complaint where the representative is not named as a party.”³⁰ As these concerns relate to the requirements to report information in the CRD system and its publication through BrokerCheck, rather than the application of

²⁸ Generally, the information in the CRD system is submitted by registered securities firms, brokers and regulatory authorities in response to questions on the uniform registration forms. The uniform registration forms are Form BD (Uniform Application for Broker-Dealer Registration), Form BDW (Uniform Request for Broker-Dealer Withdrawal), Form BR (Uniform Branch Office Registration Form), Form U4 (Uniform Application for Securities Industry Registration or Transfer), Form U5 (Uniform Termination Notice for Securities Industry Registration), and Form U6 (Uniform Disciplinary Action Reporting Form).

²⁹ CRD was developed by FINRA jointly with the North American Securities Administrators Association (“NASAA”) to fulfill FINRA’s statutory obligation to establish and maintain a system to collect and retain registration information. NASAA and state regulators play a critical role in the ongoing development and implementation of CRD. Pursuant to rules approved by the SEC, FINRA makes specific CRD information publicly available through BrokerCheck. There is a limited amount of information in the CRD system that FINRA does not display in BrokerCheck, including personal identifying information. A detailed description of the information made available through BrokerCheck is available at <http://www.finra.org/investors/about-brokercheck>.

³⁰ In 2009, the SEC approved amendments to Forms U4 and U5 to require, among other things, the reporting of allegations of sales practice violations made against unnamed persons. See Securities Exchange Act Release No. 59916 (May 13, 2009), 74 FR 23750 (May 20, 2009) (SEC Order Approving SR-FINRA-2009-008). Specifically, Forms U4 and U5 were amended to add questions to elicit whether the applicant or registered person, though not named as a respondent or defendant in a customer-initiated arbitration, was either mentioned in or could be reasonably identified from the body of the arbitration claim as a registered person who was involved in one or more of the alleged sales practice violations.

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fees related to requests to expunge customer dispute information already submitted in the CRD system and publicly available through BrokerCheck, FINRA has not addressed these concerns as part of this Proposal.

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FINRA believes that the foregoing responds to the commenters to the Proposal. If you have any questions, please contact me on 202-728-8151, email: Mignon.McLemore@finra.org.

Sincerely,

/s/ Mignon McLemore

Mignon McLemore
Assistant General Counsel
Office of General Counsel